

### **REMARKS/ARGUMENTS**

Applicant has received and carefully reviewed the Office Action of the Examiner mailed December 22, 2008. Currently, claims 1-3, 5-7, 9, 16-26, and 33-36 are pending, with claims 3, 7, 9, 18, 22, 23, and 26 previously withdrawn from consideration. Claims 1, 2, 5, 6, 16, 17, 19-21, 24, 25, and 33-36 have been rejected. After careful review, Applicant traverses the rejection of claims 1, 2, 5, 6, 16, 17, 19-21, 24, 25, and 33-36. Minor amendments to correct typographical errors have been made to claim 9, 34, and 36. No new matter has been added. Favorable consideration of the above amendments and the following remarks is respectfully requested.

#### ***Claim Amendments***

In the Office Action, the Examiner indicated that claims 9 and 34 were not examined on the merits due to conflicting dependency, and required correction. Claim 9 has been amended to correct a typographical error and properly depend from claim 1. Claim 34 has been amended to correct a typographical error and properly depend from claim 16. Applicant submits that claims 9 and 34 are now in proper condition for examination and reconsideration is respectfully requested.

Claim 36 has also been amended to correct a minor typographical error.

#### ***Claim Rejections—35 U.S.C. § 103***

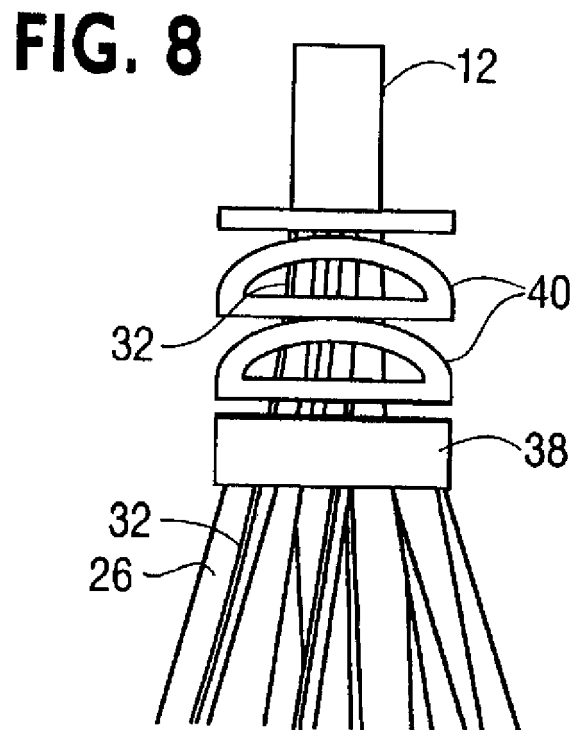
Claims 16, 17, 20, 21, 25, 33, and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ravenscroft et al. (U.S. Patent No. 6,007,558, hereinafter “Ravenscroft”) in view of Suon et al. (U.S. Patent No. 6,342,062, hereinafter “Suon”). Applicant respectfully traverses the rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP 2143.03).

In making the rejection, it appears that the Examiner has merely attempted to substitute one reference (Suon) for another (Ostrovsky – U.S. Patent No. 6,447,530), without addressing the Applicant’s previous argument, which the Examiner deemed persuasive (see Response to Arguments on page 2 of the current Office Action). Suon appears to present the same

shortcomings previously identified in Ostrovsky. Therefore, Suon appears to be inadequate to support the Examiner's obviousness assertion for at least the following reasons:

Element 38 of Ravenscroft's Figure 8 (reproduced below) is cited as the hub and tubular element 60 of Suon is asserted to be a middle tubular member "that is capable of engaging the hub". However, tubular element 60 cannot be "a middle tubular member configured to engage the hub" because, as shown by Figure 8, it does not appear physically possible for hub 38 of Ravenscroft to be engaged by a tubular member. The base of element 12 appears to be the same diameter as hub 38, which will prevent any tubular member that can pass over element 12 from engaging hub 38.



Furthermore, with respect to claim 35, neither Ravenscroft nor Suon appear to disclose, nor does the Examiner appear to explicitly attempt to identify, an inner member of a retrieval apparatus that has a cylindrical distal section configured to radially expand when compressed in a direction along its length. Instead, Suon appears to disclose a tubular stabilizer 50 that has a "claw portion" at its distal end used to grasp hub 12 (see Figures 4-6, and column 2, last 2 paragraphs for discussion).

Accordingly, Applicant submits that the cited references, alone or in combination, do not appear to disclose or suggest every element of independent claim 16. Therefore, Applicant believes claim 16 to be patentable over Ravenscroft in view of Suon. Similarly, claims 17, 20, 21, 25, 33, and 35, which depend from claim 16 and add additional elements thereto, are also believed to be patentable over the cited references. Withdrawal of the rejection is respectfully requested.

Claims 1, 2, 5, 6, and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ravenscroft et al. (U.S. Patent No. 6,007,558, hereinafter “Ravenscroft”) in view of Suon et al. (U.S. Patent No. 6,342,062, hereinafter “Suon”) and Whitcher et al. (U.S. Patent No. 6,273,901, hereinafter “Whitcher”). Applicant respectfully traverses the rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP 2143.03).

Independent claim 1 contains claim language similar to that of independent claim 16, discussed above. In particular, claim 1 recites, in part, “a retrieval apparatus including...a middle tubular member configured to engage the hub”. For at least the same reasons discussed above with respect to independent claim 16, Ravenscroft and Suon do not appear to disclose or suggest every element of claim 1. Whitcher does not appear to remedy the shortcomings of Ravenscroft and Suon. Accordingly, Applicant submits that claim 1 is indeed patentable over the cited references. Since claims 2, 5, and 6 depend from claim 1 and add additional elements thereto, these claims are also believed to be patentable.

Claim 19 depends from independent claim 16 which, as discussed above, is believed to be allowable. Since claim 19 depends from claim 16 and adds additional elements thereto, Applicant believes that claim 19 is also patentable over the cited references.

Applicant respectfully requests that the rejection of claims 1, 2, 5, 6, and 19 be withdrawn.

Claims 24 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ravenscroft et al. (U.S. Patent No. 6,007,558, hereinafter “Ravenscroft”) in view of Suon et al.

(U.S. Patent No. 6,342,062, hereinafter "Suon") as applied to claims 16 and 35, and further in view of Hebert et al. (U.S. Patent No. 6,482,221, hereinafter "Hebert"). Applicant respectfully traverses the rejection.

For at least the reasons discussed above, Applicants believe that independent claim 16 is patentable over the cited combination of Ravenscroft and Suon. Hebert does not appear to remedy the shortcomings identified above with respect to Ravenscroft and Suon. Additionally, "[i]f an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)." (MPEP 2143.03). Accordingly, Applicants submit that claims 24 and 36, which depend (either directly or indirectly) from claim 16, are also patentable, and Applicant respectfully requests that the rejection be withdrawn.

### ***Conclusion***

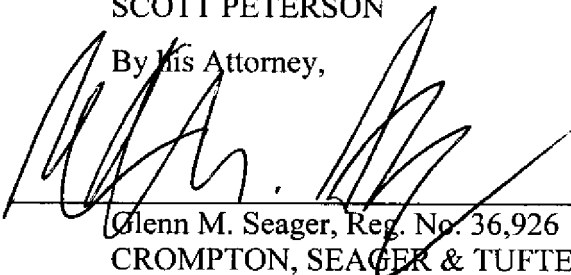
In view of the foregoing, all currently pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

SCOTT PETERSON

By his Attorney,

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